

**In the United States District Court
for the Southern District of Georgia
Brunswick Division**

2009 NOV -9 AM 9:50
C. Robinson
30 JBL DCA

TIMOTHY MONROE MULLINS, : CIVIL ACTION
Petitioner, :
v. :
DAVID FRAZIER, Warden, :
Respondent. : NO. CV209-32

ORDER

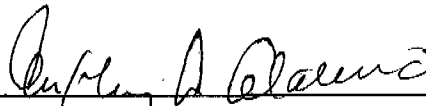
On October 8, 2009, Magistrate Judge James E. Graham entered a report and recommendation suggesting dismissal of Petitioner's case. Judge Graham concluded that petitioner's habeas corpus claim was filed untimely under the Antiterrorism and Effective Death Penalty Act.

In his objection, Petitioner asserts that he should be entitled to equitable tolling in this case because he did not find out a pertinent fact, that his indictment was amended to drop the burglary charge against him, until December 2007. Yet, Petitioner concedes that he received a life sentence for malice murder, and a five-year consecutive sentence for burglary. Dkt. No. 21 at 3. Because Exhibit A offered by Mullins suggests that the state decided to amend the indictment to allege that Mullins committed burglary with the

intent to commit a theft therein, and because Mullins concedes that he was actually convicted of burglary, and sentenced for the same crime, his bid for equitable tolling fails. Dkt. No. 21 at 3 & Ex. A.

After an independent review of Mullins' objections to the Magistrate Judge's findings, the Court concurs with the Magistrate Judge's suggested disposition of the case and hereby **ADOPTS** the report and recommendation as the order of the Court. Petitioner's objections are **OVERRULED**. Dkt. No. 21. The Clerk shall enter judgment accordingly.

SO ORDERED, this 9th day of November, 2009.



JUDGE, UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA